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ABSTRACT

The counterplan is a recent strategy used in debate whereby the negative team can urge adoption of a new policy rather than defend the status quo. This paper isolates some of the requirements for a debate counterplan, discusses its strategic implications, and describes three conditions which debate theorists define as necessary for a valid counterplan. First, it cannot adopt the topic; in doing so, both teams would agree on some form of the resolution and the affirmative team would automatically win. Second, it must be competitive with the affirmative plan; the negative team must demonstrate that its plan is exclusive and superior. Finally, the counterplan must be reasonable, presenting a policy option that the judge is able to adopt. The paper considers the potential uses for the counterplan and discusses the controversy concerning the traditional debate concepts of presumption and burden of proof in reference to it. (HAI)

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A THEORETICAL DISCUSSION OF THE COUNTERPLAN

In recent years there has been an increasing trend toward the use of the counterplan by negative teams. Only a few years ago, most teams could debate an entire season without ever coming into contact with a counterplan. Now, their use is becoming more and more widespread, and all indications suggest that this trend will continue in the future. Although prior to 1972 there were a few articles written on the counterplan,[1] for the most part, theoretical discussion was lacking. Even after 1972, the few articles which have been written have isolated singular issues involving the counterplan, rather than developing a unified theory. The result of this lack of theoretical background is that the theoretical issues concerned are discussed on an ad hoc basis in debate rounds; often neither team is sufficiently familiar with the nature of a counterplan to argue about it intelligently. This essay will attempt to isolate some of the requirements of a counterplan, as well as some of its strategic implications.

The positions taken in this essay are not meant as absolute rules. Rather, they are presented to help inform the reader of the various theories that have been advocated concerning the counterplan, as well as some of the justifications that have been offered for these positions. Not all judges will agree with all of the positions taken in this article; in most cases, these issues will have to be explained and debated in the round. The goal of this essay is to provide the debater with essential theoretical information so that he or she will be prepared either to run a counterplan, or to debate one presented by a negative opponent.

THE THEORETICAL BASIS FOR A COUNTERPLAN

Debate has often been typified as the comparison of policy systems. The two teams in a debate round each defend a policy, and the judge, it is argued, should vote for the team that defends the superior policy. The affirmative team's policy is its plan. Theoretically, the negative team can defend any policy but the resolution. Traditionally, the negative team has defended the policy of the status quo, the present system. In recent years, however, many negative teams have searched for other policies to defend. This search has led them from existing programs to structures that have merely been proposed by experts in the field being debated. Rather than defend the present system, negative teams have begun to urge the adoption of a new policy system - a counterplan.

The counterplan is analogous to an affirmative team's plan. Ideally, the counterplan should be as detailed as the affirmative team's plan, in order to facilitate the comparison of the two policies. Not all judges place this requirement on a counterplan, but it would appear to be a reasonable requirement. An affirmative team is expected to provide a detailed description of its policy option (or plan), as the embodiment of the legislation it advocates. To fail to place this requirement on the negative team when it supports a counterplan introduces a double standard into the debate, and makes it difficult to compare the two policies.

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When the negative team presents a counterplan, usually it will also argue that there are added advantages to the counterplan over and above the affirmative plan. The goal of the negative team should be to show that, on balance, the counterplan is a better policy than the affirmative plan. Conversely, the affirmative team will argue that the counterplan does not achieve the same advantages as the affirmative plan, or will cause disadvantages.

Normally, the counterplan is given in the first negative constructive.[2] This enables the maximum amount of time to be spent comparing the two policies. In order for any policy to be adequately examined, the other team should have at least one constructive speech in which to attack it. This is partially the reason why the affirmative team cannot present its plan in the first affirmative rebuttal; allowing the plan to be introduced this late in the debate prevents the negative team from adequately examining the affirmative policy. Similarly, only by allowing the affirmative team ample time to examine the counterplan can the two systems be fully compared.

The question frequently arises as to how <u>many</u> policies the negative team can defend in any given debate round. Sometimes, a negative team will present a hypothetical, or conditional, counterplan, and also defend the present system. They will then argue that if they win either the counterplan, <u>or</u> their defense of the present system, they should win the debate, and that they can drop either policy if it proves to be undesirable, as long as they are winning the other policy.

Judges will disagree on the acceptability of this strategy. Most would allow a team to argue inherency on one advantage, and to counterplan a second advantage. For example, if an affirmative team argues that we should increase the regulations on over-the-counter drugs, and also regulate the use of diagnostic x-rays, a negative team could counterplan the x-ray section of the case, and argue that the advantages from regulating over-the-counter drugs are not inherent. However, there is no agreement on whether a negative team can counterplan and argue inherency on the <u>same</u> advantage. Opponents of the hypothetical counterplan argue that, since there is only a finite amount of time available in a debate round, we do not have enough time to discuss a large number of policies. Rather than try to compare a large number of policies, none of which are adequately discussed, we should limit the debate to the comparison of two, and only two, policies. Those who support hypothetical counterplans suggest that the hypothetical counterplan represents the way real world decisions are made. Congress, in examining our health care system, does not limit itself to comparing only two policies, but instead attempts to examine all policies. Only when one policy is demonstrated to be superior to <u>all</u> other potential policies should it be adopted. We should not restrict ourselves to only two policies, because by doing so, we may fail to examine the best solution to the health care problem. There is no consensus on the validity of the hypothetical counterplan, and thus it is important that, if the debater chooses to support one, the negative position concerning its acceptability be justified.

REQUIREMENTS FOR A COUNTERPLAN

Three general requirements for a counterplan, conditional or otherwise, have been advanced by various theorists:

1. The counterplan cannot be topical. The counterplan cannot adopt the topic. The ultimate issue in any debate round is not whether the affirmative plan should be adopted, but rather whether the resolution should be adopted. If the negative counterplan is topical, then both teams agree that the resolution in some form should be adopted, and since that is all the affirmative team is required to demonstrate, the affirmative team should win.

There is some question concerning what makes a counterplan topical. Generally, for an affirmative team's plan to be topical, the definitions it presents must be reasonable. We do not require that an affirmative team's case be topical under any possible definition. For example, a comprehensive program to regulate the health care system could be defined as a program that requires daily health care check-ups, but it would be unreasonable to require all affirmative plans to contain a provision for daily check-ups. Rather, we allow the teams to define the terms in a reasonable manner, recognizing that there are other reasonable definitions that also exist.

If the standard for the topicality of an affirmative plan is "reasonableness", the question becomes, what is the standard of topicality for a counterplan? The negative team obviously is not in any trouble if the counterplan cannot be viewed as being topical under any possible definition of terms. This is the case, for example, if the negative team counterplans with a program of tax rebates at the state level of government. Where the counterplan borders on being topical, the issue is not so clear. Many argue that, just as an affirmative team must only show that its plan is reasonably topical, the negative team merely has to show that there is a reasonable way in which the counterplan can be viewed as being nontopical. At the other extreme, some feel that if there is any possible definition of terms that would include the counterplan, then the counterplan is topical and thus should be rejected. In the middle of this continuum is the school of thought that argues that the counterplan must merely be non-topical according to the definitions presented by the affirmative team. Whether or not it is topical according to other definitions that could have been given in the round is irrelevant. The affirmative team, this position argues, sets up the guidelines for the debate, and once the definition of terms has been presented, no new definitions are relevant (unless the original definitions are shown to be unreasonable). Regardless of the specific view that a team supports in arguing the topicality of a counterplan, they should indicate the standard that they wish the judge to apply in resolving the argument, as well as the specific reasons why the counterplan is or is not topical.

2. The counterplan must be competitive with the affirmative plan. This is probably the most important as well as the most misunderstood requirement. When the negative team offers a counterplan, it must

demonstrate that the counterplan and the plan cannot be simultaneously adopted. If both plans can be adopted at the same time, a wise policy-maker would adopt both policies, not only one. The exact nature of what constitutes competitiveness, however, will vary from judge to judge.

The traditional theories concerning competitiveness argued that a plan and a counterplan were competitive if they were designed to solve the same problem. This required that a counterplan solve the affirmative need. If both the plan and the counterplan solved the same problem, this position argued, there was no need to adopt both policies.

This concept probably originated with parliamentary procedure. The equivalent of a counterplan in legislative debates is a motion to substitute a bill for an original bill; technically, a motion to amend. In order to amend a bill by substituting a second bill, however, the second bill must relate to the issues raised by the original bill:

> To be germane, an amendment must in some way involve the same question that is raised by the motion to which it is applied.[3]

Thus, the bill (or counterplan) that is to be substituted for the original bill (or plan) must address the same issues as the original bill (or plan). In debate terms, this is often interpreted to mean that the counterplan must solve the affirmative need (or accrue the affirmative advantage). Proponents of this view would hold that, even if a counterplan is more advantageous than the affirmative plan, it should be rejected as being out of order if it does not solve all, or most, of the affirmative problem area.

In recent years, the emphasis on competitiveness has shifted away from the need area to a consideration of the nature of the two policies. While the traditional approach is seen as one way of establishing the competitiveness of a counterplan, it is not viewed as the only way. Often competitiveness is determined, not only on the basis of whether the counterplan can gain the affirmative advantage, but also whether the plan and the counterplan can exist at the same time.[4] Lichtman and Rohrer argue that a counterplan is competitive if it meets one of two criteria:

> The first criterion is that the plan and counterplan are mutually exclusive. The second criterion is that simultaneous adoption of the plan and counterplan, though possible, is less desirable than adoption of the counterplan alone.[5]

Two examples of counterplans may illustrate this interpretation of competitiveness. Some affirmative teams may propose placing a limit on the number of hospitals offering open heart surgery. A negative team meeting this case could not argue that a counterplan increasing medical research should be adopted instead of the affirmative plan, since there is no reason why both policies could not be adopted at the same time; they are not mutually exclusive. A counterplan and a plan are not competitive if they can be adopted simultaneously.

A second type of counterplan attempts to use the other criterion outlined by Lichtman and Rohrer. This counterplan uses the affirmative team's funding source to fund another program. For example, an affirmative team running a national health insurance case could be counterplanned by a negative team that used the affirmative team's funding mechanism to finance a program of a guaranteed annual income. At face value, this counterplan probably is not competitive, since the affirmative plan does not preclude the adoption of the counterplan with funding from other sources. If the negative team could demonstrate, however, that funding both programs would be undesirable by showing, for example, that all alternative funding sources will be more disadvantageous than the affirmative plan, then the counterplan could be viewed as competitive to the plan under the second criterion. While it is possible to adopt both the plan and the counterplan, it is more desirable to adopt only the counterplan.

The principle that should come from this discussion is that, in debating a counterplan, an affirmative team should be certain that the counterplan and the plan cannot be adopted at the same time. Even if there are planks in the counterplan that are competitive with the plan, the wise affirmative team should determine whether the advantages claimed by the negative come from those portions of the counterplan that are competitive with the affirmative plan. If the advantages do not stem from the competitive planks of the counterplan, a wise policymaker would adopt the plan and those non-competitive portions of the counterplan that gain the negative team's advantage. For example, a team running a case that outlaws paid blood donations could be counterplanned by a policy that permits paid blood donations and also increases food aid to other countries. The negative team could then argue that its counterplan is the better policy, since it saves the lives of millions of people who are currently starving in other countries. Clearly the plan and the counterplan are competitive: one cannot both outlaw and permit paid blood donations. The problem is that the added advantage to the counterplan comes from the non-competitive portion of the counterplan. In this case, there is no reason why the judge could not adopt the affirmative plan and those planks of the negative counterplan that produce its advantage, and have the best of both policies.

3. The counterplan must be capable of being adopted. The negative team, in presenting a counterplan, must present a policy option that the judge is able to adopt. There are some counterplans that a judge cannot adopt. For example, clearly a negative team cannot present a counterplan changing the laws of nature. It would be hard to deny that our health care system could be improved with a counterplan that made all Americans immune to disease. Unfortunately, judges do not have the power to change the laws of nature, so this type of argument should not enter into a judge's decision. Nor, in most cases, would a judge accept a counterplan that changed the actions of individuals. Thus, a negative team could not attempt to solve the malpractice problem with a counterplan which, with the wave of a magic wand, made all patients decide not to sue doctors, any more than a negative team could solve the crime problem by making all criminals nice people. The negative team could try to change these laws of nature or behaviors indirectly, by advocating programs to increase

medical research or limit access to courts, respectively, but the negative team would have to demonstrate that these programs would, in fact, alter such laws and attitudes. A counterplan cannot fiat a change in individual attitudes any more than an affirmative plan is permitted to do so.

Consequently, there is some question as to what policies are open to the negative team. This depends, in large measure, upon the role of the judge. Obviously the judge must be capable of adopting the affirmative plan, or else the entire debate is meaningless. On this year's topic, this seems to imply that the judge has control over federal legislation. Whether the judge can enact laws at the state, local, or international level is not as clear, although most judges probably would accept such a practice, probably based upon the importance of arguments about what level of government should adopt policies. As citizens, we are frequently forced to decide what level of government should make decisions that affect us as individuals. By allowing counterplans at the state and local level, these issues can be discussed in the debate context. Even if the judge cannot adopt a policy directly at the state level, the judge could have the federal government pass laws requiring action at the state level (as was done with Medicaid), although this may raise issues of topicality. At any rate, the potential policy options open to the negative team will always be limited to those policies the judge has the ability to adopt.

COUNTERPLANS AND PRESUMPTION

There is a great deal of controversy concerning what happens to such concepts as presumption and the burden of proof when the negative team presents a counterplan. In a normal debate, following traditional theory, the affirmative team must demonstrate that its plan is superior to the present system. The presumption is that we work within existing structures, and only when existing structures are shown to be inadequate to solve current problems should we alter those structures. In the case of a tie, the negative team wins.

When a counterplan is introduced, however, the negative team no longer is defending the present system. The question becomes, which side has presumption? Must the affirmative plan be superior to the negative counterplan, or must the negative team demonstrate its counterplan is superior to the affirmative plan? There are three theories on what happens to presumption when a counterplan is introduced:

1. Traditional Theory. Most theorists argue that, when a negative team presents a counterplan, it forfeits presumption; thus, when presenting a counterplan it must carry an advantage over and above the affirmative policy.[6] This is based on the models of legislative debates and legal proceedings. As previously noted, the counterplan is similar to a motion to amend a bill by substituting a second bill. In order to adopt the substitute motion, however, a majority vote is needed; a tie vote defeats the amendment (or counterplan).[7] Hence, presumption in the legislative debate would rest with the affirmative when a counterplan is introduced; in the event of a tie, the affirmative team would win.

This placement of presumption with the affirmative team is also supported by legal theory. A debate may be viewed as analogous to a criminal trial. The defendant (or present system) is viewed to be innocent until proven guilty. In debate, this means that presumption is normally with the negative team. However, once a defendant decides not to plead not guilty, but rather to plead guilty and offer a defense such as insanity or self-defense, presumption usually shifts. While sometimes presumption is established by law, normally the courts have held that the defendant acquires the burden of proof when he or she gives up a claim of innocence:

> It is thus apparent that the burden of proving self-defense to the satisfaction of the jury or the court (as the case may be) is on the defendant.[8]

The negative team, in effect, has offered an affirmative defense to the crime, and thus accepts all the burdens of the affirmative team. In the end, the negative team, according to this theory, must prove that its policy is superior to the affirmative team's plan in order to win.

2. Hypothesis testing. A second theory of the counterplan views debate as analogous to the testing of a scientific hypothesis. In testing a hypothesis, the hypothesis is assumed to be false. Presumption will always be against the hypothesis. If any other hypothesis can explain the results of a study, the hypothesis is either rejected or sent back for further study. With respect to debate, this position argues that presumption will always be against the resolution:

> . . . argumentation is the analogue of empirical science, and . . . it is applied in order to reach critical decisions about matters which are not susceptable to empirical verification.[9]

> . . . to reject the experimental hypothesis does not preclude taking any other position. An alternate hypothesis may be formulated, the original one may be refined, further tests may be conducted, or some combination of those approaches may be taken. By contrast, to accept the hypothesis is to foreclose the alternatives. Since rejection involves less risk than does acceptance, the hypothesis should be accepted only if it satisfies the most rigorous tests possible.[10]

> Since presumption is against the resolution, it would be impossible for the negative to surrender it except by arguing in behalf of the resolution.[11]

In essence, this position argues that to vote affirmative, a judge must be positive that the resolution is the best policy. When there is doubt about the superiority of the resolution over alternative policies, we should restrain from making a final decision. However, an affirmative vote commits us to a policy; only a negative decision keeps all options

open. This viewpoint is obviously desirable if one is debating on the negative, since the counterplan does not need to have an additional advantage over the affirmative plan under this theory; presumption is always with the negative.

3. Risk Theory. This theory does not arbitrarily assign presumption to one side. Rather, it assigns presumption to the policy that contains the least amount of risk. This will mean that presumption will rest with the affirmative team in some rounds, and with the negative team in other rounds. The location of presumption is based on the nature of the policy, not the team that advocates the policy. Usually a policy is said to have a low amount of risk if it entails a small amount of change, if it alters an unimportant policy, if it is made at a level of government that is closer to the people, if the policy can be reversed if unknown disadvantages appear, and if the evidence supporting the policy is extremely reliable. A high-risk policy does not have these characteristics, and thus contains a greater risk of producing unknown disadvantages, or of breaking down and not producing the anticipated advantages. In case of a close debate, the policy that entails the least risk should be adopted.[12] Since this depends on the nature of the policies being compared, it will sometimes be the affirmative plan, while, in other rounds, it will be the counterplan.

Judges do not agree on which of these three theories of presumption should be used to evaluate a counterplan. Often, the judges will let the teams in the round determine the theory of presumption that should be used in comparing the two policies; if a team can present and defend a theory of presumption, that theory will be utilized in rendering a decision. Where the debate is clear, in that one policy is obviously superior to another policy, this issue is not important. However, in a close debate, where the two policies do not differ greatly in their ability to solve the problem, presumption often plays a major role in the decision. It would be wise for a team to argue, in a debate round, the theory of presumption that the team feels should be used to evaluate the policy. This usually means that the affirmative team will defend the traditional theory of presumption, and the negative team will defend the hypothesis testing model or the risk theory (although occasionally the affirmative team will argue for the risk theory).

USE OF THE COUNTERPLAN

There are several potential uses of the counterplan. One use of the counterplan is to minimize the strategic value of independent advantages. If a negative team meets an affirmative case that has advantages from alcohol treatment facilities, clinical laboratories and x-rays, it would be possible to counterplan two of the advantages by adopting relevant portions of the plan at the state level, and to argue only one of the advantages. The additive advantages for the counterplan would be that it avoids the disadvantages of the portion of the case that is not counterplanned. Thus, if alcohol treatment and x-rays are adopted by the negative team at the state level, the added advantage of the counterplan would be that it would not incur the disadvantages to regulating clinical laboratories.

For this type of counterplan it would be wise for both teams to have evidence on the strengths and weaknesses of state level programs. There is a wealth of evidence available discussing the ability of state and local governments to administer programs in the field of health care, as well as the ability of states to raise money to fund programs. A wise second affirmative would present workability arguments attacking the counterplan (making sure these arguments do not also apply to the affirmative plan), as well as disadvantages to the counterplan based on the problems of state level implementation, administration and finance, and any portions of the counterplan that are unique.

A second use of a counterplan is in making extended justification arguments. Many judges do not place a great deal of weight in the argument that the affirmative team must justify all portions of the resolution. A counterplan can force the affirmative team to justify all sections of the resolution. If an affirmative team runs a case with no justification for federal action, a state level counterplan can emphasize this weakness, and the entire debate can focus on this weakness of the affirmative case. A national health insurance case may have trouble justifying the provision of comprehensive benefits, and the negative team may want to push this justification argument by counterplanning with a program of catastrophic care coverage only, arguing that the counterplan's lower cost makes it a superior policy. A negative team using this counterplan should be sure to clarify the affirmative team's position on the definition of "comprehensive program" to insure that the counterplan cannot be viewed as topical.

Finally, the counterplan can be used in much the same way that inherency arguments are used. The negative team can use the counterplan to minimize the advantage the affirmative team claims, by offering alternative ways to solve the need. This places less pressure on the second negative, since the second negative disadvantages only have to outweigh what is remaining of the advantage after the portion of that advantage gained by the counterplan is subtracted. On the malpractice case, a counterplan setting limits on malpractice awards and altering the burden of proof required by courts could minimize much of the affirmative advantage, making it easier for the second negative to win a disadvantage that outweighs the reduced advantage.

The counterplan can be a very effective strategy for negative teams. Its increasing popularity will mean that, in the future, some familiarity with its use will be essential. There are many different theories concerning the counterplan, and a debater should be cognizant of them. The best strategy is to plan ahead. Before the round begins, brief out arguments that can be made both for and against a counterplan. Develop a working knowledge of the theoretical background of the counterplan. Hopefully, this essay has provided a starting point for such an understanding.

- Walter Ulrich

FOOTNOTES

[1]For the early articles on the counterplan, see F. W. Lambertson, "Plan and Counterplan in a Question of Policy," Quarterly Journal of Speech, 29 (February, 1943): 48-52, Roger E. Nebergall, "The Negative Counterplan," Speech Teacher, 6 (September, 1957): 217-220, and Wayne N. Thompson, "The Effect of a Counterplan Upon the Burden of Proof," Central States Speech Journal, 13 (1962): 247-252.

[2]See the discussion of the counterplan in James J. Unger and James M. Copeland, Second Thoughts on the Question of Political Reform (Skokie, Illinois: National Textbook Company, 1975), pp. 26-36, especially p. 35.

[3]Henry M. Robert, Robert's Rules of Order, Newly Revised, (Glenview, Illinois: Scott, Foresman and Company, 1970), p. 113.

[4]For a detailed discussion of the nature of competitiveness, see Allan J. Lichtman and Daniel M. Rohrer, "A General Theory of the Counterplan," Journal of the American Forensic Association, 12 (Fall, 1975): 70-79.

[5]Ibid., p. 75.

[6]Thomas J. Hynes, Jr., "The Counterplan: An Historical and Descriptive Study," Unpublished M.A. Thesis, University of North Carclina at Chapel Hill, 1972, p. 41.

[7]Roberts, p. 112. See also Wayne N. Thompson, Modern Argumentation and Debate: Principles and Practices, (New York: Harper & Row, Publishers, 1971), p. 91.

[8]Gunther v. State 228 Md. 404, 179 A.2d 880 (1962).

[9]David Zarefsky, "A Reformulation of the Concept of Presumption," Paper presented at the Central States Speech Association Convention, Chicago, Illinois, April 7, 1972, p. 6.

[10]Ibid., p. 7.

[11]Ibid., p. 10.

[12]Unger and Copeland, 30-33.